

WISNER BAUM, LLP

Bijan Esfandiari (223216)
Monique Alarcon (311650)
11111 Santa Monica Blvd, Suite 1750
Los Angeles, CA 90025
Telephone: (310) 207-3233
Facsimile: (310) 820-7444

Attorneys for Plaintiff
MAGGIE GOLDEN

POOLE • SHAFFERY

John H. Shaffery (SBN 160119)
Jason A. Benkner (SBN 286790)
25350 Magic Mountain Parkway, Suite 250
Santa Clarita, California 91355
Telephone: (661) 290-2991
Facsimile: (661) 290-3338

Attorneys for Defendant,
SOMATICS, LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

MAGGIE GOLDEN,

Plaintiff,

vs.

SOMATICS, LLC and DOES 1-100,

Defendants.

Case No.: 2:23-cv-01791-JFW (MAAx)

[Assigned to Hon. John F. Walter,
Courtroom 7A]

**STIPULATED PROTECTIVE
ORDER**

Complaint filed: October 18, 2022
Trial Date: Not Set

1 Plaintiff, MAGGIE GOLDEN (“Plaintiff”), and Defendant, SOMATICS, LLC
2 (“Defendant”) (collectively the “Parties”), by and through their counsel of record,
3 hereby stipulate to, and jointly request the Court to issue, a protective order over
4 certain information and documents exchanged between the Parties pursuant to this
5 litigation.

6 **1. PURPOSES AND LIMITATIONS**

7 Discovery in this action is likely to involve production of confidential,
8 proprietary, or private information for which special protection from public disclosure
9 and from use for any purpose other than prosecuting this litigation may be warranted.
10 Accordingly, the parties hereby stipulate to and petition the Court to enter the
11 following Stipulated Protective Order. The parties acknowledge that this Stipulated
12 Protective Order does not confer blanket protections on all disclosures or responses
13 to discovery and that the protection it affords from public disclosure and use extends
14 only to the limited information or items that are entitled to confidential treatment
15 under the applicable legal principles. The parties further acknowledge, as set forth in
16 Section 13.3 below, that this Stipulated Protective Order does not entitle them to file
17 confidential information under seal; Local Rule 79-5 sets forth the procedures that
18 must be followed and the standards that will be applied when a party seeks permission
19 from the Court to file material under seal.

20 **2. GOOD CAUSE STATEMENT**

21 Good cause exists for the Court to enter this pretrial protective order. Plaintiff
22 alleges she suffered severe and permanent cognitive impairment and memory loss
23 after undergoing electroconvulsive therapy (ECT) from a device manufactured and
24 sold by Defendant Somatics. Investigation and discovery into this claim will involve
25 review of sensitive mental health records from before, during, and after ECT was
26 administered, which are afforded heightened privacy protection under Federal and
27 California law. This action is also likely to involve Defendant Somatics’ trade secrets,

1 research, development, commercial, financial, technical and/or proprietary
2 information for which special protection of this action is warranted. Accordingly, to
3 expedite the flow of information, to facilitate the prompt resolution of disputes over
4 confidentiality of discovery materials, to adequately protect information the parties
5 are entitled to keep confidential, to ensure that the parties are permitted reasonable
6 necessary uses of such material in preparation for and in the conduct of trial, to address
7 their handling at the end of the litigation, and serve the ends of justice, a protective
8 order for such information is justified. It is the intent of the parties that information
9 will not be designated as confidential for tactical reasons and that nothing be so
10 designated without a good faith belief that it has been maintained in a confidential,
11 non-public manner, and there is good cause why it should not be part of the public
12 record of this case.

13 **3. DEFINITIONS**

14 3.1. Action: This pending federal lawsuit.

15 3.2. Challenging Party: A Party or Nonparty that challenges the designation of
16 information or items under this Stipulated Protective Order.

17 3.3. “CONFIDENTIAL” Information or Items: Information (regardless of how
18 it is generated, stored or maintained) or tangible things that qualify for protection
19 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
20 Cause Statement.

21 3.4. Counsel: Outside Counsel of Record and In-House Counsel (as well as
22 their support staff).

23 3.5. Designating Party: A Party or Nonparty that designates information or
24 items that it produces in disclosures or in responses to discovery as
25 “CONFIDENTIAL.”

26 3.6. Disclosure or Discovery Material: All items or information, regardless of
27 the medium or manner in which it is generated, stored, or maintained (including,
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1 among other things, testimony, transcripts, and tangible things), that is produced or
2 generated in disclosures or responses to discovery in this matter.

3 3.7. Expert: A person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as
5 an expert witness or as a consultant in this Action.

6 3.8. In-House Counsel: Attorneys who are employees of a party to this Action.
7 In-House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 3.9. Nonparty: Any natural person, partnership, corporation, association, or
10 other legal entity not named as a Party to this action.

11 3.10. Outside Counsel of Record: Attorneys who are not employees of a party
12 to this Action but are retained to represent or advise a party to this Action and have
13 appeared in this Action on behalf of that party or are affiliated with a law firm which
14 has appeared on behalf of that party, and includes support staff.

15 3.11. Party: Any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, In-House Counsel, and Outside Counsel of
17 Record (and their support staffs).

18 3.12. Producing Party: A Party or Nonparty that produces Disclosure or
19 Discovery Material in this Action.

20 3.13. Professional Vendors: Persons or entities that provide litigation support
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 3.14. Protected Material: Any Disclosure or Discovery Material that is
25 designated as “CONFIDENTIAL.”

26 3.15. Receiving Party: A Party that receives Disclosure or Discovery Material
27 from a Producing Party.

1 **4. SCOPE**

2 The protections conferred by this Stipulated Protective Order cover not only
3 Protected Material, but also (1) any information copied or extracted from Protected
4 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
5 and (3) any testimony, conversations, or presentations by Parties or their Counsel that
6 might reveal Protected Material.

7 Any use of Protected Material at trial shall be governed by the orders of the
8 trial judge. This Stipulated Protective Order does not govern the use of Protected
9 Material at trial.

10 **5. DURATION**

11 Once a case proceeds to trial, all of the information that was designated as
12 confidential or maintained pursuant to this Stipulated Protective Order becomes
13 public and presumptively will be available to all members of the public, including the
14 press, unless compelling reasons supported by specific factual findings to proceed
15 otherwise are made to the trial judge in advance of the trial. *See Kamakana v. City*
16 *and County of Honolulu*, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing
17 “good cause” showing for sealing documents produced in discovery from
18 “compelling reasons” standard when merits-related documents are part of court
19 record). Accordingly, the terms of this Stipulated Protective Order do not extend
20 beyond the commencement of the trial.

21 **6. DESIGNATING PROTECTED MATERIAL**

22 6.1. Exercise of Restraint and Care in Designating Material for Protection.

23 Each Party or Nonparty that designates information or items for protection
24 under this Stipulated Protective Order must take care to limit any such designation to
25 specific material that qualifies under the appropriate standards. The Designating Party
26 must designate for protection only those parts of material, documents, items, or oral
27 or written communications that qualify so that other portions of the material,
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1 documents, items, or communications for which protection is not warranted are not
2 swept unjustifiably within the ambit of this Stipulated Protective Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations
4 that are shown to be clearly unjustified or that have been made for an improper
5 purpose (*e.g.*, to unnecessarily encumber the case development process or to impose
6 unnecessary expenses and burdens on other parties) may expose the Designating Party
7 to sanctions.

8 6.2. Manner and Timing of Designations.

9 Except as otherwise provided in this Stipulated Protective Order (*see, e.g.*,
10 Section 6.2(a)), or as otherwise stipulated or ordered, Disclosure or Discovery
11 Material that qualifies for protection under this Stipulated Protective Order must be
12 clearly so designated before the material is disclosed or produced.

13 Designation in conformity with this Stipulated Protective Order requires the
14 following:

15 (a) For information in documentary form (*e.g.*, paper or electronic
16 documents, but excluding transcripts of depositions or other pretrial or trial
17 proceedings), that the Producing Party affix at a minimum, the legend
18 “CONFIDENTIAL” to each page that contains protected material. If only a portion
19 or portions of the material on a page qualifies for protection, the Producing Party also
20 must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings
21 in the margins).

22 A Party or Nonparty that makes original documents available for
23 inspection need not designate them for protection until after the inspecting Party has
24 indicated which documents it would like copied and produced. During the inspection
25 and before the designation, all of the material made available for inspection shall be
26 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
27 it wants copied and produced, the Producing Party must determine which documents,
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1 or portions thereof, qualify for protection under this Stipulated Protective Order.
2 Then, before producing the specified documents, the Producing Party must affix the
3 legend “CONFIDENTIAL” to each page that contains Protected Material. If only a
4 portion or portions of the material on a page qualifies for protection, the Producing
5 Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
6 markings in the margins).

7 (b) For testimony given in depositions, that the Designating Party
8 identify the Disclosure or Discovery Material on the record, before the close of the
9 deposition, all protected testimony.

10 (c) For information produced in nondocumentary form, and for any other
11 tangible items, that the Producing Party affix in a prominent place on the exterior of
12 the container or containers in which the information is stored the legend
13 “CONFIDENTIAL.” If only a portion or portions of the information warrants
14 protection, the Producing Party, to the extent practicable, shall identify the protected
15 portion(s).

16 6.3. Inadvertent Failure to Designate.

17 If timely corrected, an inadvertent failure to designate qualified information or
18 items does not, standing alone, waive the Designating Party’s right to secure
19 protection under this Stipulated Protective Order for such material. Upon timely
20 correction of a designation, the Receiving Party must make reasonable efforts to
21 assure that the material is treated in accordance with the provisions of this Stipulated
22 Protective Order.

23 7. CHALLENGING CONFIDENTIAL DESIGNATIONS

24 7.1. Timing of Challenges.

25 Any Party or Nonparty may challenge a designation of confidentiality at any
26 time that is consistent with the Court’s Scheduling Order.

27 7.2. Meet and Confer.

1 The Challenging Party shall initiate the dispute resolution process, which shall
2 comply with Local Rule 37.1 et seq., and with Section 4 of Judge Audero's Procedures
3 ("Mandatory Telephonic Conference for Discovery Disputes").¹

4 7.3. Burden of Persuasion.

5 The burden of persuasion in any such challenge proceeding shall be on the
6 Designating Party. Frivolous challenges, and those made for an improper purpose
7 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
8 expose the Challenging Party to sanctions. Unless the Designating Party has waived
9 or withdrawn the confidentiality designation, all parties shall continue to afford the
10 material in question the level of protection to which it is entitled under the Producing
11 Party's designation until the Court rules on the challenge.

12 **8. ACCESS TO AND USE OF PROTECTED MATERIALS**

13 8.1. Basic Principles.

14 A Receiving Party may use Protected Material that is disclosed or produced by
15 another Party or by a Nonparty in connection with this Action only for prosecuting,
16 defending, or attempting to settle this Action. Such Protected Material may be
17 disclosed only to the categories of persons and under the conditions described in this
18 Stipulated Protective Order. When the Action reaches a final disposition, a Receiving
19 Party must comply with the provisions of Section 14 below.

20 Protected Material must be stored and maintained by a Receiving Party at a location
21 and in a secure manner that ensures that access is limited to the persons authorized
22 under this Stipulated Protective Order.

23 8.2. Disclosure of "CONFIDENTIAL" Information or Items.

24
25
26 _____
27 ¹ Judge Audero's Procedures are available at
28 <https://www.cacd.uscourts.gov/honorable-maria-audero>

1 Unless otherwise ordered by the Court or permitted in writing by the
2 Designating Party, a Receiving Party may disclose any information or item designated
3 “CONFIDENTIAL” only to:

4 (a) The Receiving Party’s Outside Counsel of Record, as well as
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to
6 disclose the information for this Action;

7 (b) The officers, directors, and employees (including In-House Counsel)
8 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

9 (c) Experts of the Receiving Party to whom disclosure is reasonably
10 necessary for this Action and who have signed the “Acknowledgment and Agreement
11 to Be Bound” (Exhibit A);

12 (d) The Court and its personnel;

13 (e) Court reporters and their staff;

14 (f) Professional jury or trial consultants, mock jurors, and Professional
15 Vendors to whom disclosure is reasonably necessary or this Action and who have
16 signed the “Acknowledgment and Agreement to be Bound” (Exhibit A);

17 (g) The author or recipient of a document containing the information or
18 a custodian or other person who otherwise possessed or knew the information;

19 (h) Plaintiff’s medical providers noticed for depositions or designated as
20 trial witnesses to the extent reasonably necessary to testify or in preparing to testify;

21 (i) During their depositions, witnesses, and attorneys for witnesses, in
22 the Action to whom disclosure is reasonably necessary provided: (i) the deposing
23 party requests that the witness sign the “Acknowledgment and Agreement to Be
24 Bound” (Exhibit A); and (ii) the witness will not be permitted to keep any confidential
25 information unless they sign the “Acknowledgment and Agreement to Be Bound,”
26 unless otherwise agreed by the Designating Party or ordered by the Court. Pages of
27 transcribed deposition testimony or exhibits to depositions that reveal Protected
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1 Material may be separately bound by the court reporter and may not be disclosed to
2 anyone except as permitted under this Stipulated Protective Order; and

3 (j) Any mediator or settlement officer, and their supporting personnel,
4 mutually agreed upon by any of the parties engaged in settlement discussions.

5 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
6 **PRODUCED IN OTHER LITIGATION**

7 If a Party is served with a subpoena or a court order issued in other litigation
8 that compels disclosure of any information or items designated in this Action as
9 “CONFIDENTIAL,” that Party must:

10 (a) Promptly notify in writing the Designating Party. Such notification
11 shall include a copy of the subpoena or court order;

12 (b) Promptly notify in writing the party who caused the subpoena or
13 order to issue in the other litigation that some or all of the material covered by the
14 subpoena or order is subject to this Stipulated Protective Order. Such notification shall
15 include a copy of this Stipulated Protective Order; and

16 (c) Cooperate with respect to all reasonable procedures sought to be
17 pursued by the Designating Party whose Protected Material may be affected.

18 If the Designating Party timely seeks a protective order, the Party served with
19 the subpoena or court order shall not produce any information designated in this action
20 as “CONFIDENTIAL” before a determination by the Court from which the subpoena
21 or order issued, unless the Party has obtained the Designating Party’s permission. The
22 Designating Party shall bear the burden and expense of seeking protection in that court
23 of its confidential material and nothing in these provisions should be construed as
24 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
25 directive from another court.

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1 **10. A NONPARTY’S PROTECTED MATERIAL SOUGHT TO BE**
2 **PRODUCED IN THIS LITIGATION**

3 10.1. Application.

4 The terms of this Stipulated Protective Order are applicable to information
5 produced by a Nonparty in this Action and designated as “CONFIDENTIAL.” Such
6 information produced by Nonparties in connection with this litigation is protected by
7 the remedies and relief provided by this Stipulated Protective Order. Nothing in these
8 provisions should be construed as prohibiting a Nonparty from seeking additional
9 protections.

10 10.2. Notification.

11 In the event that a Party is required, by a valid discovery request, to produce a
12 Nonparty’s confidential information in its possession, and the Party is subject to an
13 agreement with the Nonparty not to produce the Nonparty’s confidential information,
14 then the Party shall:

15 (a) Promptly notify in writing the Requesting Party and the Nonparty that
16 some or all of the information requested is subject to a confidentiality agreement with
17 a Nonparty;

18 (b) Promptly provide the Nonparty with a copy of the Stipulated
19 Protective Order in this Action, the relevant discovery request(s), and a reasonably
20 specific description of the information requested; and

21 (c) Make the information requested available for inspection by the
22 Nonparty, if requested.

23 10.3. Conditions of Production.

24 If the Nonparty fails to seek a protective order from this Court within fourteen
25 (14) days after receiving the notice and accompanying information, the Receiving
26 Party may produce the Nonparty’s confidential information responsive to the
27 discovery request. If the Nonparty timely seeks a protective order, the Receiving Party
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1 shall not produce any information in its possession or control that is subject to the
2 confidentiality agreement with the Nonparty before a determination by the Court.
3 Absent a court order to the contrary, the Nonparty shall bear the burden and expense
4 of seeking protection in this Court of its Protected Material.

5 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
7 Protected Material to any person or in any circumstance not authorized under this
8 Stipulated Protective Order, the Receiving Party immediately must (1) notify in
9 writing the Designating Party of the unauthorized disclosures, (2) use its best efforts
10 to retrieve all unauthorized copies of the Protected Material, (3) inform the person or
11 persons to whom unauthorized disclosures were made of all the terms of this
12 Stipulated Protective Order, and (4) request such person or persons to execute the
13 “Acknowledgment and Agreement to be Bound” (Exhibit A).

14 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
15 **PROTECTED MATERIAL**

16 When a Producing Party gives notice to Receiving Parties that certain
17 inadvertently produced material is subject to a claim of privilege or other protection,
18 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
19 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
20 may be established in an e-discovery order that provides for production without prior
21 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
22 parties reach an agreement on the effect of disclosure of a communication or
23 information covered by the attorney-client privilege or work product protection, the
24 parties may incorporate their agreement in the Stipulated Protective Order submitted
25 to the Court.

26 **13. MISCELLANEOUS**

27 13.1. Right to Further Relief.

1 Nothing in this Stipulated Protective Order abridges the right of any person to
2 seek its modification by the Court in the future.

3 13.2. Right to Assert Other Objections.

4 By stipulating to the entry of this Stipulated Protective Order, no Party waives
5 any right it otherwise would have to object to disclosing or producing any information
6 or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
7 Party waives any right to object on any ground to use in evidence of any of the
8 material covered by this Stipulated Protective Order.

9 13.3. Filing Protected Material.

10 A Party that seeks to file under seal any Protected Material must comply with
11 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court
12 order authorizing the sealing of the specific Protected Material at issue. If a Party's
13 request to file Protected Material under seal is denied by the Court, then the Receiving
14 Party may file the information in the public record unless otherwise instructed by the
15 Court.

16 **14. FINAL DISPOSITION**

17 After the final disposition of this Action, within sixty (60) days of a written
18 request by the Designating Party, each Receiving Party must return all Protected
19 Material to the Producing Party or destroy such material. As used in this subdivision,
20 "all Protected Material" includes all copies, abstracts, compilations, summaries, and
21 any other format reproducing or capturing any of the Protected Material. Whether the
22 Protected Material is returned or destroyed, the Receiving Party must submit a written
23 certification to the Producing Party (and, if not the same person or entity, to the
24 Designating Party) by the 60-day deadline that (1) identifies (by category, where
25 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
26 that the Receiving Party has not retained any copies, abstracts, compilations,
27 summaries or any other format reproducing or capturing any of the Protected Material.

1 Notwithstanding this provision, Counsel is entitled to retain an archival copy of all
2 pleadings; motion papers; trial, deposition, and hearing transcripts; legal memoranda;
3 correspondence; deposition and trial exhibits; expert reports; attorney work product;
4 and consultant and expert work product, even if such materials contain Protected
5 Material. Any such archival copies that contain or constitute Protected Material
6 remain subject to this Stipulated Protective Order as set forth in Section 5.

7 **15. VIOLATIONS**

8 Any violation of this Stipulated Order may be punished by any and all
9 appropriate measures including, without limitation, contempt proceedings and/or
10 monetary sanctions.

11
12 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

13
14 Dated: 9/21/2023

WISNER BAUM, LLP

15
16 Monique Alarcon
17 Attorneys for Plaintiff

18 Dated: 9/21/2023

POOLE SHAFFERY

19
20 Jason A. Benkner
21 Attorneys for Defendant Somatics

22
23 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

24
25 Dated: September 22, 2023



26 Maria A. Audero
27 United States Magistrate Judge
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____[full name], of
_____[address],
declare under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for the
Central District of California on _____[date] in the case of Golden v.
Somatics, LLC, case no. 2:23-cv-01791-JFW (MAAx). I agree to comply with and to
be bound by all the terms of this Stipulated Protective Order, and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment
in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Stipulated
Protective Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____[full name]
of _____[address and telephone
number] as my California agent for service of process in connection with this action
or any proceedings related to enforcement of this Stipulated Protective Order.

Signature:

Printed Name:

Date:

City and State Where Sworn and Signed: